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Beth A. Rotman, Director, Citizens' Election Program, 860-256-2940

Senate Bill 421 An Act Concerning Elections

Good morning, Chairperson Slossberg, Chairman Spallone, Ranking Members Senator McLachlan and Representative Hetherington, and distinguished Committee members. I am Beth Rotman, Director of the State of Connecticut's Citizens' Election Program. Today, I am testifying on behalf of the Commission in support of Senate Bill 421. As always, it is a pleasure to appear before this Committee.

SB 421 resulted from a tremendous amount of work by both the Commission and the caucuses during last year's session. Many portions of this bill came directly from the Commission based on its experiences administering the program in 2008. Other portions came directly from candidates and treasurers based on their collective experiences in 2008.

As you know, in 2008 Connecticut saw the first run of the Program for General Assembly elections. In the wake of that historic run, we received an enormous amount of feedback from candidates and treasurers both in testimony during public hearings and during the audit process over this past year. While the 2008 run of the Program was by all accounts an unqualified success, our experience and the experience of participants revealed that a few Program components required Commission attention – several of these components are addressed with this bill.

The other portions of SB 421 came from the caucuses reflecting the experiences of candidates and treasurers during the 2008 run of the Program. Overall, the bill achieves many significant goals. Although many of the proposed "fixes" are individually small, when considered together, they act to greatly strengthen the Program as we head into the 2010 statewide election.

I should note that some of the proposed fixes in SB 421 are also contained in the Commission's proposal embodied in HB 5428. SB 421 represents a much broader sweep of the Program issues identified by the Commission, treasurers, candidates, caucus staff and others. Many of these proposed fixes were raised in HB 6662 and HB 6663 during the 2009 session. HB 5428 is a more condensed bill. It and the other Commission proposals from 2010 were streamlined proposals meant to represent the Commission's absolutely necessary fixes for Program administration in 2010. Although the Commission supports those proposed changes in HB 5428, it also supports the additional changes embodied here. For example, SB 421 proposes a revised supplemental reporting schedule which will take great strides in easing the administrative burden of candidates and their treasurers during 2010.

Simply put, SB 421 represents a great deal of hard work and the Commission would like to acknowledge the enormous collaborative effort evident in this proposal. I should also note that there is considerable overlap between HB 5428, SB 421 and HB 5022 as far as the sections of the law that are impacted and the changes that are being effectuated. The Commission is committed to working with this Committee to ensure that the language in the final bill will be consistent and will work from a legal and administrative standpoint.

Repeals General Statutes § 9-717

First and foremost, one of the proposed fixes in SB 421 is decidedly not small – the repeal of General Statutes § 9-717. This repeal was also proposed by the Commission in HB 5428 and is an integral part of both HB 5021 (the Governor's bill) and HB 5022. It is the Commission's position that the repeal of 9-717 is the single most important change that the legislature can effectuate this session in order to secure the existence of the Program.

As was discussed in the Commission's testimony in support of HB 5021 and HB 5022, it is crucial that 9-717 be repealed to ensure the continued existence of the CEP. By its repeal, the Program can maintain continuity and provide the 2010 candidates and treasurers with consistent rules and confidence that they will not change, while preserving Connecticut's groundbreaking public campaign financing program. As it currently stands, § 9-717 returns the state of the law to its pre-2007 language (i.e. it would suspend all the changes made by Public Act 05-5), if there is a court order enjoining the Program in effect for more than one week. As you know, such an injunction is currently in place and has been stayed by the Court. We must be mindful that this stay will be lifted the moment the Second Circuit decides the appeal of Judge Underhill's decision and such a decision is imminent. By repealing this provision, the legislature removes the most certain threat to the Program's survival and, in the Commission's view the importance of this portion of SB 421 cannot be overstated.

Severability Provision

Much like HB 5021 and HB 5022, SB 421 also seeks to address Judge Underhill's adverse decision regarding certain portions of the Program. Although this proposal is not as comprehensive as the other proposals already under review this session, it does take steps to address the Court's primary concern regarding the differing treatment of minor party candidates under the Program. SB 421 sets forth a severability provision which would sever those portions of the law that are found unconstitutional and would, upon a court of competent jurisdiction finding these provisions are unconstitutional as applied to minor party candidates, treat said candidates as major party candidates until December 31 of that year. Combined with the repeal of 9-717, this provision would insure that only those portions of the Program statutes that are found unconstitutional would be affected by an adverse Second Circuit decision. Furthermore, if the Second Circuit finds in a decision this year that the Program provisions providing differing treatment of minor party candidates are unconstitutional, this proposal provides the Commission a way to administer the Program in 2010 while also providing the legislature with time to draft a response.

Modifies the "90 percent" Supplemental Reporting Requirement

SB 421 reflects the Commission's proposed amendment to the current filing schedule for 90 percent supplemental statements. The law currently mandates that candidate committees in primaries or elections where there is at least one participating candidate must file supplemental financial disclosure statements with the Commission when they have raised or spent funds which cumulatively exceed 90 percent of the participant's applicable expenditure limit. Once one candidate in the race triggers this 90 percent reporting requirement, all candidates in that race must file periodic supplemental disclosure statements either bi-weekly or weekly depending on when during the election cycle the 90 percent trigger was hit.

The ultimate goal of these "90 percent" statements is to provide campaigns and the public with disclosure as close as possible to the election. Furthermore, such statements inform participating candidates of whether their opponents are close to exceeding the Program's expenditure limit which will trigger a supplemental grant to that candidate. Additionally, such statements inform the Commission of those candidates who are close to triggering supplemental grants to their opponents. Finally, these statements apprise candidates of any war chests their nonparticipating opponents may have accumulated.

Although these supplemental reports are clearly beneficial on several levels, treasurers during 2008 found the timing of these statements challenging to ascertain. Because the initial 90 percent statement is triggered by funds raised or expenditures incurred by a candidate committee, the initial filing deadline for the first supplemental statement is necessarily different for every race. Furthermore, candidate committees are required to keep up to the day records of receipts and expenditures to comply with the trigger. Finally, as was evident in 2008, it is impossible under the current system to anticipate when your opponent might file an initial statement thus triggering periodic statements by the other campaigns in the race. Because of this considerable uncertainty, in 2008 several candidate committees missed filing deadlines and the ultimate goal of increased disclosure was not fully met. Additionally, there was confusion regarding the deadline for the supplemental statement when that statement was due on or near the same day as the regular statement due seven days preceding the election.

Candidates and treasurers expressed these concerns both during and after the 2008 run of the Program. The Commission agrees wholeheartedly that this is an area where the Program can and should be improved and rises in support of this section of SB 421. The proposal replaces the "90 percent" supplemental reporting structure with scheduled weekly reporting deadlines that fall close to the primary or election day. The modified schedule (1) requires weekly disclosure starting the Thursday of the calendar week after the last quarterly filing prior to the primary or election (July and October) up until one week prior to the primary or election; and (2) eliminates the "seven day preceding the election" report required pursuant to section 9-608 for the candidates in these campaigns. These changes eliminate the overlapping reporting requirements and the uncertainty caused by the current "90 percent" supplemental reporting structure while providing campaigns with a finite set of reporting deadlines. In the Commission's view it is extremely important to make meeting the filing deadlines easier for candidates and their treasurers while still ensuring financial disclosure and transparency, especially close to the election.

Creates Exemption for "1B filers" Who Certify They Will Spend Less than $1,000

Under the current law all candidates must either opt in or opt out of the Program by filing an affidavit of intent to abide (SEEC Form CEP 10) or filing an affidavit of intent not to abide (SEEC Form CEP 11). There are some candidates however that are exempt from filing financial disclosure statements with the SEEC because they have certified that they intend to raise and/or spend less than $1,000 pursuant to section 9-608 (b) ("1B filers"). The Commission believes that such candidates should not be required to file either a SEEC CEP Form 10 or a SEEC CEP Form 11 as they have effectively already certified their intent not to participate in the Program by filing the Form 1B. Accordingly, the requirement that such 1B filers opt in or out of the Program imposes an extra administrative burden without any corresponding benefit. SB 421 creates an exemption for such 1B filers and treats them as nonparticipating candidates unless or until they "change course" and file a SEEC CEP Form 10 declaring their intent to abide by the expenditure limits and participate in the Program.

Requires Statewide Candidates to Submit Back-up Documentation with Periodic Disclosure Statements

Currently, participating candidates must only submit back-up documentation supporting qualifying contributions with their grant application. Given the large amount of qualifying contributions required for statewide candidates – and the resultant large amount of accompanying back-up documentation supporting these qualifying contributions that must be reviewed by the Commission – statewide candidates should be required to provide this backup documentation to the Commission on or about the time they file the periodic financial disclosure statements in which said qualifying contributions are reported. SB 421 proposes this change which will ensure thorough and timely review of such qualifying contributions. This will, in turn, facilitate Commission staff's ability to assist Statewide candidates with any issues with their qualifying contributions and accompanying documentation and will streamline the application process for such participating candidates.

Prohibits Qualifying Contributions from Minors Under the Age of 12

Under the current Program, children under the age of eighteen - regardless of how young they are - can contribute up to thirty dollars to candidates for public office. Accordingly, participating candidates can accept qualifying contributions from minors in order to reach their qualifying thresholds. This raises the issue of donative intent. From the perspective of safeguarding the Public Fisc, it is extremely important for the Commission to verify the donative intent of those contributors who make qualifying contributions to participating candidates as these contributions will help to qualify such candidates for a public grant. Such donative intent is difficult to investigate and verify if a contributor is very young. More importantly, candidates and treasurers have asked the Commission for a bright line in evaluating whether a child is old enough to have the requisite donative intent to make a qualifying contribution. In response to this need, SB 421 sets forth a bright line for qualifying contributions at 12 years old.

Clarifies that a Participating Candidate Facing an Opponent on the Statutory Deadline for Nomination Shall be Deemed Opposed for the Election Campaign

Under the current Program, if a participating candidate is "unopposed" he or she is only eligible to apply for a one-third grant. During the 2008 run of the Program certain participating candidates were met with uncertainty regarding their grant amounts in instances where they had a nominated opponent who withdrew subsequent to the deadline for nomination and was not immediately replaced. One candidate described this experience in testimony at the Commission's post-election hearings, noting that, in some instances, such nominated opponents were not replaced until close to the deadline to fill a vacancy (which is 21 days prior to the election). This situation leads to uncertainty for participating candidates who will not know how much grant money they can spend at different points during the election cycle which in turn may de-incentivize participation in the Program. Indeed, many participating candidates informed Commission staff that they did not know whether they would participate in the Program due to the uncertainty created by such issues.

SB 421 sets a firm deadline for determining opposition status. We should note that this fix was also proposed by the Commission in HB 5428. Under these proposals, a participating candidate that faces an opponent on the statutory deadline for nomination shall be deemed "opposed" for the entire election campaign and will be eligible to apply for and receive a full grant according to this designation. This will create certainty for participating candidates regarding both their grant amounts and expenditure limits for the duration of the election regardless of the shifting ballot status of their opposition – something participating campaigns have no control over. This is important for incentivizing participation in the voluntary Program and protecting the candidates who elect to join the Program.

Allows Ten Business Days for Review of Statewide Grant Applications

The current Program provides the Commission with four business days to review and approve or deny applications for public grants. As was apparent after the 2008 run of the Program, this four day period was generally sufficient for legislative candidates. It is also clear, however, that this will not be a sufficient amount of time for the Commission to review applications by statewide candidates. Because of the substantially greater amount of qualifying contributions that must be raised by statewide candidates to qualify – and the substantially greater amount of backup documentation that must be reviewed by the Commission – four days will be insufficient time for the Commission to review these applications. Accordingly, SB 421 provides the Commission with ten business days to issue a determination about a grant application submitted by a candidate for statewide office. Such additional time is crucial so that the Commission has the requisite time needed to conduct the level of comprehensive review needed to safeguard the Public Fisc.

Briefly Extends Review Period for General Election Applications Submitted During Final Week to Determine Primary Grants

As the law currently stands, the Commission must concurrently review applications for both primary and general election grants. This raised some concern during the 2008 run of the Program during the final week to review grant applications for primary grants. During this primary application deadline week, the Commission faced a large number of primary grant applications. In several instances, the Commission had to work closely with candidates to "cure" problems with their applications under a significant time crunch in order to meet the statutory deadline on release of primary grant monies. Given the time pressure during this primary deadline week, in order to ensure timely and complete review of any general election grant applications that are received, the Commission requires some flexibility. SB 421 takes steps to alleviate this issue by allowing candidates to submit their general election grant applications during the final review and approval period for primary election grant applications, but extending the Commission's time to review such general election grant applications until after the primary election grants are reviewed.

Mandates Electronic Filing (as discussed in Commission testimony about HB 5428)

Like the Commission's proposal in HB 5428, SB 421 also mandates electronic filing for candidates and committees who raise or spend more than $5,000. The Commission commends this proposal. Mandatory electronic filing serves the dual purpose of providing the public with the utmost transparency regarding the expenditure of public funds while insuring accurate and prompt disclosure of campaign finances. For good reason, electronic filing is required in most major public financing jurisdictions and with such a mandate, Connecticut will lead the way in providing ultimate public disclosure. Accordingly, the statute should be amended to require electronic filing, as discussed in Commission testimony regarding HB 5428 – An Act Concerning the Powers and Duties of the State Elections Enforcement Commission, The Integrity of Elections and Revisions to the Citizens' Election Program.

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It is the Commission's position that the reforms proposed here as well as those embodied in HB 5428 will help to ensure that Connecticut's landmark campaign finance program will endure and will continue to amplify the voice of individual contributors while providing responsible stewardship of the Public Fisc.